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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,649	09/09/2003	Paul W. Budge	48967-01011	4314

34013 7590 11/04/2004  
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SALT LAKE CITY, UT 84111

EXAMINER

GREEN, CHRISTY MARIE

ART UNIT PAPER NUMBER

3635

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/658,649

**Applicant(s)**

BUDGE, PAUL W.

**Examiner**

Christy M Green

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is a second office action for serial number 10/658649, entitled Structural Thermal Framing and panel System for Assembling Finished or Unfinished Walls with Multiple panel Combinations for Poured and Nonpoured Walls, filed on September 9, 2003.

#### ***Priority***

It is noted that this application appears to claim subject matter disclosed in a prior Application No. 09/938713 and US Provisional application No. 60/197039, filed August 23, 2000. A reference to the prior application, with the application number, must be inserted as the first sentence of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e) or 120. See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. Also, the current status of all nonprovisional parent applications referenced should be included.

If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during

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the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A priority claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed claim for priority under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over VanderWerf, US patent # 6,698,710.

VanderWerf discloses the claimed invention a method for assembling a wall, comprising steps of: attaching a first slotted connector angle (26) to a floor (16) at a location where a wall is desired to be built (10 - figure 25), said slotted connector angle having slots spaced at a distance from one another (along 26a - figure 26) corresponding to a desired spacing of studs; providing a stud element (figure 3, at 40), said stud element comprising: first and second flange elements (32, 34); and bottom and upper tab elements (at 48 and 50 - see attached figure 4) at the respective bottom and upper ends of said stud element (at 40), each tab element being adapted for connection to a slot of the first slotted connector angle (26 figure 1); attaching a wall panel (20) to the first flange element of said stud element (at 40); inserting the bottom tab element (see attached figure 4) of said stud element (at 40) into a corresponding slot of the first connector angle (along 26a - figure 26); repeating said steps of attaching of a wall panel to additional first flange elements of additional stud elements, inserting of the bottom tab element of such additional stud elements into adjacent slots (column 14, lines 56-63) of the first slotted connector angle (column 12, lines 36-39), and the further step of attaching the second flange element of each additional stud element to the previous wall panel (column 14, lines 56-63), until a portion of a wall is formed of a first line of stud elements and associated wall panels (figure 1); connecting the stud element (at 40) to the opposing stud element (at 40) of the first line of stud elements, and repeating the steps until the wall is formed of stud elements associated wall panels

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(figure 3); providing a support element (36a) on at least some of the stud elements, placing horizontal reinforcement rods onto the support elements (column 14, lines 14-24); a space (22) between the wall panels (18, 20), pouring cement into the space (column 12, lines 27-29); the slotted connector angle is attached to the floor at a location on the inside and outside margin of the wall (see attached figure 1); and, the first slotted connector angle (26) is L-shaped (figure 26).

VanderWerf does not specifically disclose the step of attaching a second or third slotted connector element to the top or upper tab elements of each of the stud elements in order to provide additional support to the portion of the wall formed in the preceding steps. Since VanderWerf already states that the footing brackets (26) may be inserted after the assembly system and that another type of connector element (910 - figure 35) to the top of the stud elements and wall panels, it would have been obvious for one having ordinary skill in the art to provide additional brackets on each side of the wall panels, to the top/upper tab elements of each stud in order to further assist with proper alignment during the assembly of the system and to further act as an inhibitor to outward movement of the bottom/top edges of the panels (column 19, lines 57-61).

### ***Response to Arguments***

Applicant's arguments filed 8/4/04 have been fully considered but they are not completely persuasive.

In regards to the applicants argument that filing date of VanderWerf is December 20, 2000, is subsequent to the priority date of the present application, claiming priority to U.S. patent application no. 09/938713, and US provisional Application No. 60/197039

filed August 23, 2000. After reviewing the application, the examiner agrees with the applicant, however the priority statement is not included within the specification as stated above, the applicant is advised to place the priority statement within the disclosure, and until then, the rejection remains the same.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christy M Green whose telephone number is 703-308-9693. The examiner can normally be reached on M-F 8:00-4:00.

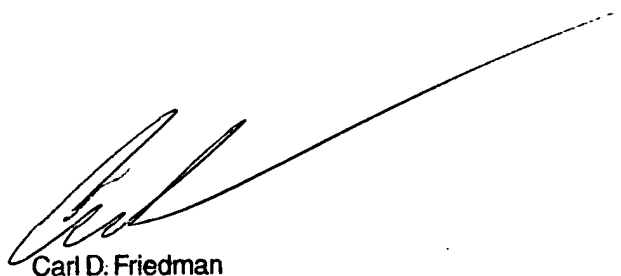
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Cg

October 30, 2004

  
Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600